written for a meeting between CAA and three employees of the SSBA in the Spring of 1992 to discuss mutual problems[1]

Clydeside Action on Asbestos is a registered charity run solely by volunteers, almost all of whom are themselves victims of asbestos-related industrial disease. The bulk of our work consists in offering advice, support and counsel to other victims. At present our greatest priority is the establishment of a genuine and mutually supportive liaison between ourselves and the Department of Social Security, perhaps in particular with the Social Security Benefits Agency.

We are extremely concerned by the very low success rate in claims made by victims of asbestos poisoning, particularly within the West of Scotland where the incidence of occupational exposure to the fibre within traditional industries such as shipbuilding, construction and heavy engineering makes it one of the asbestos blackspots in Europe. Much of this industry no longer exists but because of the nature of asbestos poisoning the actual peak of the disease has not yet arrived. We remind you that some of these victims are terminally ill. But sooner or later they will all die from that exposure, and they are aware of this.

These people and their families have to come to terms with this tragedy while at the same time trying to cope with the struggle to receive social security benefits which are lawfully theirs as of right in the overwhelming majority of cases. We must stress that most claimants only submit a claim when their own doctors advise them to do so. In the case of mesotheliomas in 1985, 94% of referred claims throughout the U.K. were successful; other figures accept by the DSS show that 85% of mesotheliomas are occupational. It is in this context that we express our concern at the unnecessary hardship and distress being endured by victims in the West of Scotland.

We respect that the SSBA works within a framework of policy objectives set by the DSS, in regard to the decision-making procedure of adjudicating officers and other authorities. Yet the issues surrounding asbestos-related industrial disease are complex and go beyond the area of involvement of the DSS. Although we cannot

[1] this positive step followed our submission of case 33 to the Chief Adjudication 0fficer

expect adjudicating officers to be fully aware of these issues we ask that a degree of respect is given them and that where possible a genuine effort is made either to understand them or pay heed to those who do. Without such consideration the possibility of natural justice for victims of asbestos-related industrial disease is very remote indeed.

There is a common but mistaken belief that mesothelioma is the only form of cancer proven to be caused by asbestos. This is not true. Mesothelioma is the cancer of the membranes lining the lungs and intestines.

> It accounts for just 10 per cent of cancers which have been proven to be induced by exposure to asbestos. To concentrate on mesothelioma is to concentrate on the minor killer at the expense of the major killer effects.
>
> Asbestos attacks the lung, colon, larynx; stomach, chest and heart. Earlier this century causes of death among workers exposed to asbestos were mainly respiratory, pneumonia or influenza. But once better health conditions developed (viz antibiotics and other drugs) asbestosis sufferers were observed to die from another frequent cause - cancer. 0f the total asbestos-induced cancers, 80 per cent are in the lungs, 10 per cent are of the lining of the lungs and intestines, and 10 per cent in other sites - particularly throat, intestines and stomach. 0ne authority estimates that asbestos may cause at least 17 per cent of all cancers [when it was discovered that some individuals could develop lung cancer and mesothelioma after just ONE exposure "the world's largest asbestos multinational was so concerned it moved its executive-offices into the purest air in the USA - the Rocky Mountains..."].
>
> Studies by independent scientific authorities indicate that anyone whose work involves exposure to asbestos has OVER FIVE TIMES THE CHANCE OF DYING FROM LUNG CANCER compared to the average industrial worker who is not exposed to asbestos. In the high asbestos exposure occupation of insulation installation, for example, at least half the workers eventually die from asbestos disease.

0ne major source of conflict between victims (claimants) and the DSS arises from the application of form B1 77P. Clydeside Action on Asbestos respects the fact that the rules require the SSBA adjudicating officer to verify the victim's claim in regard to occupational exposure. But it is crucial that we are clear on why it is that replies to form B1 77P always seem to act against the victim. There is no question that as far as victims are concerned this aspect of the procedure on social security benefits verges on the pernicious, and acts only as an obstruction to claims. Yet a brief look at the history of asbestos abuse by employers would allow adjudicating officers to gain a perspective on the problem.

Those who have fought against asbestos abuse in industry are faced by employers determined to disguise the real and potential dangers of the fibre. Many companies have actually refused to disclose health records or have kept their records secret in an attempt to cover-up the dangers within their own operation. 0ne multinational was found not to inform its employees if their regular x-rays showed signs of asbestos disease (the same corporation had known about asbestos hazards at least as early as 1934).

0bviously no employer under the sun wants to risk being faced by a civil action. Yet this is the immediate implication of any positive reply on behalf of the victim (claimant). By admitting that an employee or ex-employee was exposed to asbestos while occupied in "employed earner's employment", employers expose themselves to the likelihood of a civil action for industrial compensation.

In the light of attested evidence over the past 80 or so years it is beyond credibility (not to mention the probabilities prescribed by law) that the DSS should accept any employer's reply on form B1 77P at face-value. Yet this is the case at present. And the onus of proof of occupational-exposure is then on the victim (claimant).

For every victim who enters our office there must be at least 10 who don't. 0ur files contain the names of hundreds of people in the West of Scotland who have found themselves in a situation that can only be described as nightmarish. In many cases claimants are set tasks that are virtually impossible, eg. victims (or the widows of deceased victims) can be forced to trace back through work-histories of more than forty years to ascertain the names and addresses of former colleagues willing to bear witness to the fact that the victims were employed by certain firms who have either long since gone out of business, or who simply deny all knowledge of them.

While Clydeside Action on Asbestos appreciates the need for verification of occupational-exposure this should never proceed beyond the probabilities prescribed by law. The suffering endured both by victims and families of victims as a direct effect of the abuse and misuse of the objectives underlying form B1 77P cannot be overstressed. It seems to us proven beyond reasonable doubt that the DSS cannot continue to assume impartiality on the part of employers.

We are aware that policy changes in this respect are the province of the DSS as opposed to the SSBA but we ask that the SSBA adjudicating officers and other

authorities recognise the reality, and exercise their discretionary powers where possible when receiving perfunctory replies from employers. This can be achieved by greater knowledge and appreciation of asbestos use and abuse, with particular reference to the actual human tragedy of the victims and their families. At the highest Government level this was acknowledged fairly recently with the introduction of a Parliamentary memo to the effect that ALL asbestos cases be treated with courtesy and discretion.

This should lead directly to a particular consideration of asbestos victims. The current time-delays on claims and appeals are quite simply shocking, often stretching from nine to twelve months from a victim's first application (which we again must stress is almost always as a referral from a medical practitioner's diagnosis). Asbestos-related diseases are ALWAYS progressive. Victims cannot recover. Their condition ALWAYS deteriorates. Citing the extreme case of mesothelioma, the average life-span of victims from first diagnosis is only 44 weeks.

There can be a proper application of Social Security (Industrial Injuries) (Prescribed Diseases) Regulations reg 2(a) and Schedule 1. This rule need not be obstructive. It makes allowances even for these victims whose employment does not enter the explicitly stated categories but whose disease is <u>obviously</u> prescribed industrial, i.e. a direct effect of their "employed earner's employment in an occupation ...involving substantial exposure to the dust arising from the operations" listed in a), b) and c).

In other words a victim need not have worked with asbestos directly. Those who understand the past uses and abuses of asbestos, not just in industry but through its application in a variety of working environments, would never hesitate to apply the term "obviously" when describing certain diseases as prescribed industrial.

Even with the best will in the world many of the senior personnel who address form B1 77P on behalf of their employers are in ignorance of the subject; they do not actually know when workers are being exposed to asbestos while engaged in their "employed earner's employment". In many cases the adjudicating officers and other DSS authorities will have a greater overall understanding. But undisputed evidence of a victim's condition and occupation, allied to a basic knowledge of the subject should provide any adjudicating officer with enough evidence to exercise discretionary powers.

In a recent case (towards the end of 1991) a school was advised by Clydeside Action on Asbestos to close down while asbestos-removal work was being carried out rather than risk damaging the health of the children and staff. Until communicating with this office the headmaster had laboured under an old misapprehension, that whereas the asbestos in the school was white, it is really only blue asbestos which is deadly.

This is a very dangerous fallacy. The argument is based on early studies of South African miners and rests on the shaky grounds that the smaller the diameter of the fibre the greater the cancer risk (blue is smaller and more brittle than white). Independent authorities (i.e. those not employed by the asbestos industry) have consistently challenged this proposition. Maybe blue is slightly more dangerous under certain circumstances and for certain cancers in certain individuals. But ultimately this is like saying a cutlass is more lethal than a sabre.[2]

There are too many general misconceptions to list here but it is worth mentioning that some employers still seem to believe that asbestos can be "locked-in" (i.e. embedded in) plastic and cement and is therefore not dangerous. But evidence that these so-called "locked-in" fibres do escape has become overwhelming.

Clydeside Action on Asbestos does not underestimate the lack of general knowledge on the subject; nor do we seek to direct blame onto individual agencies. 0ur group is widely acknowledged both at home and abroad as among the leading U.K. experts in the field. It is in the interests of the victims we support and counsel that we actively encourage the sharing and dissemination of our knowledge and information. As we said at the outset, we seek dialogue; we want to establish genuine and mutually supportive links with the DSS and its agencies, in particular the SSBA. This is by way of an opener to our discussion.

[2] I can't remember whose phrase I'm paraphrasing here, but it's taken from somewhere, so apologies to whoever it is.